

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7404

BILL NUMBER: HB 1260

NOTE PREPARED: Apr 9, 2003

BILL AMENDED: Apr 7, 2003

SUBJECT: Withholding Judgment of Conviction.

FIRST AUTHOR: Rep. Avery

FIRST SPONSOR: Sen. Long

BILL STATUS: As Passed - Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

(A) It allows a court to enter a judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction of a Class A misdemeanor within three years if the person fulfills certain conditions.

(B) It would allow a court to make a judgement of conviction of a Class A misdemeanor if a person is being sentenced for auto theft or receiving stolen auto parts instead of a Class D felony.

(C) It would prohibit a court from reducing a conviction of the possession of child pornography, currently a Class D felony, to a Class A misdemeanor.

Effective Date: July 1, 2003.

Explanation of State Expenditures: *Provision A:* If courts convert convictions of a Class D felony to a Class A misdemeanor, there may be fewer offenders committed to Department of Correction (DOC) facilities.

A Class D felony is punishable by a prison term ranging from six months to three years. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Provisions B and C: Any reduction in commitments to DOC facilities for auto theft will depend on the discretion of the sentencing courts.

See also *Explanation of Local Expenditures*.

Explanation of State Revenues: *Provision A:* Revenue to the Common School Fund could be affected if the sentencing court decides to reduce a conviction to a Class A misdemeanor. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are \$120.

Explanation of Local Expenditures: (Revised) *Provision A:* Under this bill, a court could convert a conviction for a Class D felony to a Class A misdemeanor within three years. The court would set conditions for the defendant with which to comply if the defendant wishes to avoid being convicted of a Class D felony. Depending on the restrictions the court wishes to impose, the defendant may remain under the supervision of the local probation department for up to three years. This compares to a maximum length of time of 12 months if the court enters a judgment of a Class A misdemeanor.

If defendants are assigned to probation after sentencing, the workload for probation departments may increase.

Provision B: Under current law, if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor if:

- the person has not committed a prior, unrelated felony that was not reduced to a Class A misdemeanor within the last three years; and
- the current offense is not a domestic battery as a Class D felony (IC 35-42-2-1.3), an auto theft (IC 35-43-4-2.5), or receiving stolen auto parts (IC 35-43-4-2.5).

This bill would allow a court to make a judgement of conviction of a Class A misdemeanor if a person is being sentenced for auto theft or receiving stolen auto parts instead of a Class D felony. But this bill would also prohibit a court from reducing a conviction of the possession of child pornography, currently a Class D felony, to a Class A misdemeanor.

Provision C: Under current law, a person convicted of possession of child pornography could be sentenced to a Class A misdemeanor. Under this bill, the court would not have the ability to make this reduction.

Whether Provisions B and C would have offsetting effects on jails and prisons: DOC reports that the number of offenders committed for auto theft was 200 per year between FY 2000 and 2002. DOC reports that no offenders were committed for receiving stolen auto parts as the most serious offense in the past six years. Possession of child pornography was a Class A misdemeanor until July 1, 2002, when P.L. 3 -- 2002 increased the crime to a Class D felony.

In addition, under current law, the court is required to enter judgement of conviction after a verdict, finding, or plea of guilty at the time of sentencing and may not withhold judgment until a further date.

Explanation of Local Revenues: *Provision A:* Offenders sentenced to probation as a misdemeanant may pay an initial user fee of not more than \$50 and a maximum \$10 monthly probation user's fee.

See *Explanation of State Revenues*. The court fee for both misdemeanors and felonies is \$120.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction.

Fiscal Analyst: Mark Goodpaster, 317-232-9852